

1 Nathan Dooley (SBN 224331)
Adam C. Bonin (*Pro hac vice*)
2 COZEN O'CONNOR
601 South Figueroa Street, Suite 3700
3 Los Angeles, California 90017
Telephone: 213.892.7900
4 Toll Free Phone: 800.563.1027
Facsimile: 213.892.7999

5 Attorneys for Plaintiffs
6 KOS MEDIA and MARKOS MOULITSAS
ZUNIGA

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 KOS MEDIA, LLC and MARKOS
MOULITSAS ZUNIGA,

11 Plaintiffs,

12 vs.

13 RESEARCH 2000 AND DELAIR D. ALI,
14 Defendants.

Case No.: 3:10-cv-02894-MEJ

**DECLARATION OF ADAM C.
BONIN IN SUPPORT OF
APPLICATION FOR ENTRY OF
DEFAULT JUDGMENT**

Complaint filed: June 30, 2010

16
17 I, Adam C. Bonin, am an attorney of record in this action for Plaintiffs Kos
18 Media LLC and Markos Moulitsas Zúniga, and declare as follows:

19
20 1. I am an attorney at law duly admitted to practice before this court *pro hac*
21 *vice* and am an attorney of record for the Plaintiffs in this case. As such, I have
22 personal knowledge of the files and pleadings in this matter as well as the facts stated
23 herein. If called upon as a witness, I could and would competently testify thereto.

24
25 2. Defendants Research 2000, Inc., and Delair D. Ali, after having briefly
26 appeared in this action, have seen their counsel withdraw from this matter and have
27 not responded to the complaint within the time permitted by law.
28

1 3. Neither Defendant is an infant, incompetent person, or a person in
2 military service or otherwise exempted from default judgment under the Soldiers' and
3 Sailors' Civil Relief Act of 1940.
4

5 4. The clerk has previously entered the default of said defendants on May
6 20, 2011 (Research 2000) and December 6, 2011 (Ali).
7

8 5. On December 6, I informed Defendants via email of Plaintiffs' intent to
9 seek entry of default judgment. A true and correct copy of the email is attached hereto,
10 made a part hereof, and marked Exhibit "A."
11

12 6. This action involves claims for breach of contract; unfair business
13 practices pursuant to Cal. Bus. and Prof. Code §§ 17200 et seq.; breach of implied
14 warranty; fraud and intentional misrepresentation; negligent misrepresentation;
15 constructive fraud; and conversion relating to fraudulent and deceptive practices by
16 Defendants in the provision of political polling contracted for by Plaintiffs for the
17 DailyKos.com website. A true and correct copy of the Complaint is attached hereto,
18 made a part hereof, and marked Exhibit "B".
19
20

21 7. As a result of the entry of the default, the allegations of the Complaint are
22 deemed admitted.
23

24 8. Those allegations conclusively establish through rigorous statistical
25 analysis and Defendants' subsequent conduct that Research 2000 and Delair Ali did
26 not perform the weekly polls for Defendants which they were contracted to provide,
27 instead fabricating data every week for more than a year while intentionally and
28

1 deceitfully representing to Plaintiffs that polling was being performed pursuant to the
2 parties' agreement and the standards of the polling industry.

3
4 9. Instead, anomalies revealed by subsequent expert statistical analysis
5 confirmed that the week to week male and female sub-samples on politicians'
6 "favorable" ratings yielded a pattern of results the equivalent of obtaining 776 heads
7 on 778 tosses of a "fair" coin, an event which should occur one in every 10^{228} (ten
8 followed by 228 zeroes) times. Similarly, the week-to-week statistical variations
9 claimed by Research 2000 could not have occurred randomly; the odds of its results
10 occurring by chance were less than one in 10^{16} , i.e. one in ten million-billion. The
11 only logical conclusion is that their numbers were not generated by independent
12 polling but by massive falsification of data.

13
14
15
16 10. Despite repeated promises, Defendants refused to provide Plaintiffs with
17 any raw data which could verify that *any* polling was actually conducted.

18
19 11. In accordance with the parties' agreement, Plaintiffs had made payments
20 to defendants totaling \$105,000 for such polling. A true and correct spreadsheet
21 detailing these payments is attached hereto, made a part hereof, and marked Exhibit
22 "C".

23
24 12. These allegations establish Defendants' breach of contract; unfair
25 business practices pursuant to Cal. Bus. and Prof. Code §§ 17200 et seq.; breach of
26 implied warranty; fraud and intentional misrepresentation; negligent
27 misrepresentation; constructive fraud; and conversion.
28

I declare under penalty of perjury, pursuant to 28 *U.S.C.* § 1746, that the facts contained in this declaration are true and correct to the best of my knowledge, information and belief.

-S/-

ADAM C. BONIN

¹ Should the Court decline to award punitive damages, the interest amount on a judgment of \$105,000.00 would be \$33,973.97, and thus the total award \$138,837.97.